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6 Attorneys Defendant  
Portfolio Recovery Associates, LLC  
7 erroneously sued as Portfolio  
Recovery Associates  
8

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11  
12 FREDERICK PALUMBO,

13 Plaintiff,

14 vs.  
15

16 PORTFOLIO RECOVERY  
ASSOCIATES,

17 Defendants.  
18

CASE NO. **'13CV2990 BEN JMA**

**NOTICE OF REMOVAL**

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Portfolio Recovery Associates, LLC  
3 erroneously sued as Portfolio Recovery Associates (“Defendant”), hereby removes to  
4 this Court the state court action described below.

5 1. On June 6, 2013, a complaint was filed against Defendant by  
6 plaintiff Frederick Palumbo (“Plaintiff”) in an action pending in the Superior Court  
7 of the State of California in and for the County of San Diego, entitled *Palumbo v.*  
8 *Portfolio Recovery Services*, case number 37-2013-00309734-SC-SC-CTL. A copy  
9 of the state court Claim and Order to Go to Small Claims Court and Application,  
10 Declaration, and Order to Serve the Secretary of State that were served on Defendant  
11 are attached hereto as **Exhibit A**.

12 2. In the Complaint, Plaintiff alleges that he resides in San Diego,  
13 California. *See* Ex. A, Complaint at ¶ 1. Accordingly, Defendant is informed and  
14 believes that Plaintiff is a citizen of the State of California.

15 3. This removal petition is timely under 28 U.S.C. § 1446(b) because  
16 Defendant was served on November 16, 2013. *See* Cal. Corp. Code § 17061(c)(1)  
17 (service is complete ten days after complaint is delivered to the California Secretary  
18 of State).

### 19 **JURISDICTION**

20 4. This action is a civil action of which this Court has original jurisdiction  
21 under 28 U.S.C. § 1331 and which may be removed to this Court by Defendant  
22 pursuant to the provisions of 28 U.S.C. § 1441(a) in that the Complaint asserts  
23 claims against Defendant allegedly arising under the Fair Debt Collection Practices  
24 Act, 15 U.S.C. §§ 1692, *et seq.* *See* Exhibit A, Complaint, ¶ 3 (“Portfolio has  
25 continued to contact Plaintiff by telephone 2-3 X per week for the last 3 years despite  
26 [*sic*] Plaintiff protestations & written demands to cease & didn’t . . . Federal & State  
27 FPC Act mandate \$1000 compensatory damages per Violation”), SC-100, Item 3  
28

1 (Defendant “has contacted [Plaintiff] past 8:[00] p.m. at night and Saturdays [and]  
2 Sundays in further violation of federal [and] state F.D.C.P. Act”).

3 5. As the Complaint was filed in the Superior Court of the State of  
4 California, County of San Diego, venue in this District is proper. *See* 28 U.S.C. §  
5 1441(a) (providing for removal “to the district court of the United States for the  
6 district and division embracing the place” where the state court action is pending); 28  
7 U.S.C. § 84(d) (The Southern District comprises the counties of Imperial and San  
8 Diego).

9 6. Defendant is represented by the undersigned.

10  
11 DATED: December 12, 2013

SIMMONDS & NARITA LLP  
TOMIO B. NARITA  
R. TRAVIS CAMPBELL

12  
13  
14 By: 

R. Travis Campbell  
Attorneys for defendant  
Portfolio Recovery Associates, LLC  
erroneously sued as Portfolio Recovery  
Associates  
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# Exhibit A



**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA  
BUSINESS PROGRAMS | BUSINESS ENTITIES  
1500 11th Street, 3rd floor | Sacramento, CA 95814 | Tel (916) 657-5448 | [www.sos.ca.gov](http://www.sos.ca.gov)

November 13, 2013

**RECEIVED**

**DEC - 5 2013**

PORTFOLIO RECOVERY ASSOCIATES  
140 CORPORATE BOULEVARD  
NORFOLK, VA 23502

**By General Counsel**

RE: PALUMBO vs. PORTFOLIO RECOVERY ASSOCIATES, Superior Court of  
California, County of San Diego, Case No. 37-2013-00309734-SC-SC-CTL

The enclosed documents pertaining to the above referenced action were delivered to  
Regina DiLoreto, Deputy Secretary of State, on November 6, 2013.

In accordance with statutory requirements, the documents are being forwarded to you.

Jana Castro  
Deputy Secretary of State

Encl.  
Certified Mail  
rrr



12/14/13

9:15 AM

D-1

PARTY WITHOUT ATTORNEY (Name and address): <u>Fredrick Dalumbo</u> <u>209 Front Street #1508</u> <u>San Diego, CA 92101</u> TELEPHONE NO.: FAX NO. (Optional):		FOR COURT USE ONLY: 2013 OCT 10 PM 3:57 CLERK OF SUPERIOR COURT COUNTY OF SAN DIEGO, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> EAST COUNTY DIVISION, RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		
PLAINTIFF(S) <u>Dalumbo</u> DEFENDANT(S) <u>Portfolio Recovery Associates</u>		
APPLICATION, DECLARATION, AND ORDER TO SERVE THE SECRETARY OF STATE		CASE NUMBER <u>37-2013-009734-SC-SC-CFL</u>

## APPLICATION

Plaintiff Dalumbo, Fredrick requests that the court issue an order permitting service on the Office of the Secretary of State on behalf of defendant Portfolio Recovery Associates, a corporation/LLC, in the above-entitled action. This request is based on this declaration and the records or evidence on file with the court.

## DECLARATION IN SUPPORT OF REQUEST

I am a plaintiff in this action. The defendant corporation/LLC is subject to the jurisdiction of this court because it conducts a collection business in California on a continual basis.  
 Mailing by the Office of the Secretary of State to the defendant's address at: 140 Corporate Boulevard  
Norfolk, Va. 23502 will accomplish actual notice to the corporation/LLC.

I have verified with the Office of the Secretary of State that:

- ☒ The defendant corporation/LLC has no designated agent for service of process nor any officers or agents in the State of California.
- ☐ The designated agent resigned and has not been replaced or is no longer authorized to act.
- ☐ The agent cannot with reasonable diligence be found at the address designated for personally delivering the process and that process against the defendant corporation/LLC cannot be served with reasonable diligence upon the designated agent by hand.
- ☐ Additional facts are stated on an attached declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 10/03/2013

F. Dalumbo

Signature of Declarant

## ORDER

The court having considered the application and good cause appearing, IT IS SO ORDERED:

- That the plaintiff's claim be personally delivered to the Secretary of State and service accepted on behalf of defendant PORTFOLIO RECOVERY ASSOCIATES, a corporation/LLC that has been doing business in the State of California but has not designated an agent for service of process, and has no corporate officers or agents located in the State of California.
- That the Secretary of State shall promptly give notice to the above-referenced defendant corporation/LLC by serving a copy of this order and the plaintiff's claim filed against the defendant corporation/LLC at the following address:  
140 CORPORATE BOULEVARD NORFOLK, VA 23502

Date: 10/14/13

[Signature]  
 Judge/Commissioner of the Superior Court

**SC-100****Plaintiff's Claim and ORDER  
to Go to Small Claims Court**

Clerk stamps date here when form is filed.

**FILED**

Clerk of the Superior Court

**JUN 06 2013****Notice to the person being sued:**

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

**Aviso al Demandado:**

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Fill in court name and street address:

**Superior Court of California, County of**  
**San Diego**  
 8950 Clairemont Mesa Blvd  
 San Diego, CA 92123

Clerk fills in case number and case name:

**Case Number:**

37-2013-00309734-SC-SC-CTL

**Case Name:**

Palumbo vs. Portfolio Recovery Associates

**Order to Go to Court****The people in ① and ② must go to court: (Clerk fills out section below.)**

<b>Trial Date</b>	<b>Date</b>	<b>Time</b>	<b>Department</b>	<b>Name and address of court if different from above</b>
1.	10/02/2013	02:15:00 PM	KM-1	
2.	<b>DEC 18 2013</b>	<b>9:15 AM</b>	<b>KM-1</b>	
3.	<b>WRITTEN REQUEST FOR CONTINUANCE MUST INCLUDE A \$10.00 FEE AND BE SUBMITTED AT LEAST 10 DAYS BEFORE TRIAL.</b>			

Date: 07/17/2013 Clerk, by Aida Cruz, Deputy

**Instructions for the person suing:**

- You are the Plaintiff. The person you are suing is the Defendant.
- Before you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to: [www.courts.ca.gov/smallclaims/forms](http://www.courts.ca.gov/smallclaims/forms).
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.